Criminal Appeal No.474-SB of 2002.

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Paramjit alias Pamma **...**Appellant

VERSUS

State of Punjab **...**Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr. Sunder Singh, Advocate,
for the appellant.

Mr.Ajaib Singh, Additional Advocate General, Punjab.

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MOHINDER PAL, J.

This appeal is directed against the judgment and sentence order dated January 31, 2002, passed by the learned Additional Sessions Judge, Gurdaspur, whereby appellant Paramjit alias Pamma was convicted under Section 376 of the Indian Penal Code (hereinafter referred to as `the Code') and sentenced

to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- and in default thereof to undergo further rigorous imprisonment for six months.

2. The facts of the prosecution case are that on April 11, 2000, at about 1 P.M prosecutrix (name withheld), aged about six years, was present in her house with her family. Paramjit alias Pamma (appellant), aged about 25 years, who was neighbour of the prosecutrix, was playing with her. He then took her towards fields on his cycle. When she did not turn back for quite some time, Kulwant Singh (complainant), father of the prosecutrix, started searching for her. At about 3 P.M, when the complainant, along with his uncle Joginder Pal and aunt Satya Wanti, while searching for prosecutrix, was going towards drain of Village Badeshan, cries of a girl coming from the wheat crop of Kulwinder Singh, were heard. The complainant and others at once went towards the wheat crop field and saw that the appellant was committing rape on the prosecutrix. On seeing them, the appellant ran away from the spot. The prosecutrix was smeared with blood at that time. She was taken to hospital.

3. The complainant along with Sarpanch Sukhjinder Singh was going to Police Station to inform the police about the occurrence when Sub Inspector Bachittar Singh met them on the way. He recorded statement of Kulwant Singh, which is Exhibit P.H, made his endorsement Exhibit P.H/2 and sent the same to Police Station where formal First Information Report

(Exhibit P.H/3) was registered by Assistant Sub Inspector Kashmir Singh. He then went to the place of occurrence and prepared rough site plan Exhibit P.M with correct marginal notes.

The Investigating Officer went to hospital and made application Exhibit P.D for medical examination of the prosecutrix. She was medically examined.

The accused was arrested on April 16, 2000. He was also got medically examined and was found fit to indulge in sexual intercourse.

After completion of investigation, challan was presented in Court.

4. The accused was charged under Section 376 of the Code. He did not plead guilty to the charge and claimed trial.

5. In order to prove its case, the prosecution examined Dr.Gopal Raj (P.W.1), Dr. (Ms.) Raminder Kaler (P.W.2), Complainant Kulwant Singh (P.W.3), Joginder Pal (P.W.4), Moharrir Head Constable Jasbir Singh (P.W.5), Constable Narinderjit Singh (P.W.6), Constable Surjit Singh (P.W.7, Sub Inspector Bachittar Singh, Investigating Officer (P.W.8), Constable Harbhajan Singh (P.W.9) and Smt. Gurwinder Kaur, Principal, National Public School, Dadwan (P.W.10).

6. Statement of the accused was thereafter recorded under Section 313 of the Code of Criminal Procedure. He denied the prosecution allegations and pleaded false implication. He further stated that the complainant had taken a loan of Rs.2,000/- from him and when he pressed for return of the amount, the

complainant falsely implicated him in this case. He tendered in evidence report of the Chemical Examiner, which is Exhibit D.A.

7. I have heard the arguments of Mr. Sunder Singh, Advocate, appearing for the appellant and of Mr.Ajaib Singh, Additional Advocate General, appearing for the State of Punjab, and have scrutinized the evidence with their assistance.

8. Learned counsel for the appellant has assailed the judgment of the trial Court on the point that the ocular evidence has no corroboration from the medical evidence. It has been contended that as per the statement of complainant Kulwant Singh (P.W.3), when they reached at the place of occurrence, the accused picked up his clothes and ran away. However, no under garment (`kachha') of the accused had been recovered by the police. It is not mentioned as to whether the accused had put on his clothes or was without clothes when he ran away from the place of occurrence.

9. It was also argued that there was no mud or wheat lashes or scratches on the back of the prosecutrix, which would have been there had the rape been committed on her in the manner put forth by the prosecution. To support this contention, learned counsel for the appellant has referred to the ***Medical Jurisprudence and Toxicology (Seventh Edition) by Dr. P.C. Dikshit, Professor and Head, Department of Forensic Sciences, Maulana Azad Medical College, New Delhi,*** under the Heading ***Medical Examination in Sexual Offences*** (Page 585) wherein it has been mentioned that " For example, if a

woman alleges that she was raped in a muddy field or in bushes, then pieces of vegitation may be trapped within the clothing and may be recovered during the undressing process." It has further been mentioned at page 586 " Bruises, scratches and stains on the thighs and buttocks should be looked for. The pubic hairs should be examined and any matted stains or foreign material cut away and preserved." Learned counsel also referred to page 590 wherein it has been so mentioned:-

> " Where children have been raped, there may be gross damage to the vagina, with even complete perforation into the peritoneal cavity. The presence of any inflammation or discharge or signs of venereal disease must be noted through the examination."

10. Finally, the learned counsel for the appellant referred to certain discrepancies in the statements of the prosecution witnesses, which according to him, render the prosecution doubtful and entitle the accused to acquittal.

11. After giving a careful thought to the arguments advanced by the learned counsel for the appellant, I find that the same are not convincing ones. The gist of the arguments of the learned counsel is that statements of complainant Kulwant Singh (P.W.3), Joginder Pal (P.W.4), who had reached the place of occurrence and had seen the accused

committing rape on the prosecutrix, do not find corroboration from medical evidence; that non-presence of mud or wheat lashes or scratches on the back of the prosecutrix make the prosecution case doubtful; and that there are certain discrepancies in the statements of prosecution witnesses.

So far as the contention of the learned counsel that the ocular account and medical evidence are in conflict with each other, we may refer to the statement of Dr. (Ms.) Raminder Kaler (P.W.2), who had medically examined the prosecutrix on April 12, 2000 and mentioned her age as 6 years in her report, observed thus:

> " Patient was conscious, moderately built, pulse was 80 P.M. Blood pressure 100/80. No axillary or pubic hair were found present. There was no breast development nor history menstruation. Her clothes were blood stained.
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> **On local examination**:- No pubic hair was present. Fresh mid-line tear extending from the mid line towards the inner region, approximately 3 cms in length was present. Little finger could introduce in the vagina. Hymen was found torn. Two swabs were taken from the vagina and sent for chemical examination at Patiala. "

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The doctor further observed as under:-

> " According to the report of the Chemical Examiner Exhibit P.F, simen was found on the exhibits. On the basis of the report of the Chemical Examiner coupled with the observation at the time of the medical examination of the prosecutrix, I form a firm opinion that she had been raped. On receipt of the X-ray report, opinion was given by Dr. Jagjiwan Lal, Radiologist to the effect that the age of the prosecutrix was 4 to 6 years."

In view of the above clear-cut opinion of Dr.(Ms.) Raminder kaler (P.W.2) and the ocular account given by complainant Kulwant Singh, father of the prosecutrix (P.W.3) and Joginder Pal (P.W.4), it cannot be said by any stretch of imagination that the medical evidence does not furnish corroboration to the ocular evidence. There is also the evidence of Smt.Gurwinder Kaur, Principal, National Public School, Dadwan, who deposed that as per record of the school, date of birth of the prosecutrix was April 10, 1995, The date of occurrence is April 11, 2000. As such, she was exactly five years old at the time of occurrence. The statement of the complainant cannot at all be doubted. Similarly, the statement given by Joginder Pal (P.W.4), who resides near the house of the complainant and accompanied him to search for the prosecutrix

when she did not return home for quite some time, cannot be questioned. He stated that when they reached the spot after hearing the shrieks of the prosecutrix, the accused was found committing rape on her and on seeing them he ran away after picking up his clothes in his hands. He stated that the prosecutrix was found naked in the wheat field and her clothes were lying there with blood stains. She was unconscious. No discrepancy worth-mentioning was pointed out. It is also not necessary that the witnesses should narrate the parrot like version while deposing in Court. Some discrepancies are bound to occur in the statements of the witnesses especially when the evidence is recorded after a long time. Once the witnesses appear to have given a true account of the occurrence, microscopic scrutiny of their evidence is not record. The argument of the learned counsel for the appellant that no mud or injury was found on the body of the prosecutrix and that the story of rape becomes doubtful is bound to be negatived in view of the clear-cut medical evidence discussed above i.e her clothes were blood stained and that hymen was found torn. Moreover, it is difficult to ascertain as to what was the posture of the prosecutrix when she was subjected to rape. It is quite possible that the accused himself might by lying on the ground and had forced the girl to sit on his private parts. In the circumstances of this case, the observations by Dr. P.C. Dikshit, as contained in the ***Medical Jurisprudence and Toxicology (Seventh Edition),*** referred to above, are of no help

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to the appellant.

12. Though the appellant took the plea in his statement recorded under Section 313 of the Code of Criminal Procedure that the complainant had taken a loan of Rs.2,000/- from him and when he pressed for return of the amount, the complainant falsely implicated him in this case, but it seems to be an after-thought as no question in this regard was put to complainant Kulwant Singh (P.W.3), father of the prosecutrix. Admittedly, there was no enmity between the parties and no father would stoop so low to falsely implicate a person in an offence like this by making his own minor daughter a victim in the case.

13. Another argument was raised by learned counsel for the appellant that the prosecutrix was not examined in this case and in the absence of her evidence, the accused was entitled to acquittal. However, this argument also needs to be repelled as it has come in the evidence that she was about five years of age when rape was committed on her and as such, at such a tender age, her evidence would have been of no consequence

14. In view of the above discussed evidence, I find no merit in this appeal and dismiss the same.

November 05, 2007. **(MOHINDER PAL)**
ak **JUDGE**